

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Tango Marine S.A.,

Plaintiff,

V.

Elephant Group Limited

Elephant Group PLC,

Defendants,

and

Heritage Agro-Allied Foods Inc.

Heritage Agro-Allied (H2A) Foods Nigeria Limited

Shine Bridge Global Incorporated,

Garnishees.

CIVIL ACTION _____

IN ADMIRALTY, Rule 9(h)

**VERIFIED ORIGINAL COMPLAINT WITH REQUEST FOR
ISSUE OF PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT**

Plaintiff Tango Marine S.A. (“Tango” or “Plaintiff”) brings this action against Defendants Elephant Group Limited and Elephant Group PLC (collectively, “Elephant Group”), *quasi in rem*, pursuant to Supplemental Admiralty and Maritime Rule B for issue of writ of maritime attachment and garnishment, and states as follows:

Jurisdiction and Venue

1. This is a case of admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333 and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. Venue is proper in this District because the Garnishees named herein are located and/or can be found in this District.

3. Venue is also proper in this District because defendants' property, namely, accounts payable to defendants, is or soon will be in this District.

4. Defendants cannot be found in this District within the meaning of Supplemental Rule B.

The Parties

5. Tango is a Marshall Islands corporation and has its principal place of business at Piraeus, Greece. At all times relevant to this action, Tango was the owner of the M/V TEAM TANGO (the "Vessel").

6. Elephant Group is one or more Nigerian corporations with its principal place of business at Lagos, Nigeria. Elephant Group's website states that it is "a major player in the cash crop trade, exports are made out of Africa to the international communities. We started exporting agro comodities [sic] in 1995."¹ In 2017, Elephant Group was rated as one of the top 100 companies in Nigeria.² Elephant Group produces, imports and mills rice, and produces, mills and exports cassava and cashews.

7. Garnishee Heritage Agro-Allied Foods Inc. ("Heritage") is a Texas corporation with its principal offices located at 902 W Pioneer Pkwy, Grand Prairie, TX 75051, with its resident agent, A A Associates, located at the same address, in this District. AgroNigeria is an integrated agro-centric communications and media company with which Heritage is affiliated. AgroNigeria's website discloses that the Governor of Edo State (Nigeria), in April 2018, "announced his intention to partner Heritage Agro-Allied (H2A) Foods and Elephant Group Plc,

¹ <https://www.elephantgrp.com/?q=exports>.

² <https://www.elephantgrp.com/?q=update/elephant-group-top-100-companies-nigeria>.

to cultivate a \$6 million 1,155-hectare cassava farm and start a food processing facility in the state, to advance agricultural development.”³ At that same announcement meeting, Dr. Tony Bello, Chief Executive Officer of both Garnishee Heritage and Garnishee Shine Bridge, stated that “[t]he Central Bank of Nigeria (CBN) through the Nigeria Incentive-Based Risk Sharing System for Agricultural Lending (NIRSAL) and the Anchor Borrowers Programme [sic], is ready to invest about N214 million in the project.” “On our part, we are investing about \$6 million in cassava transformation for staple foods in Edo State.” *Id.*

8. Heritage Agro-Allied (H2A) Foods Nigeria Limited (“H2A”) is a wholly-owned subsidiary of Heritage. The owners of H2AFoods⁴ also are Directors of Heritage and Officers of H2A:

Mr. Ofodile Ojirika
Director (Heritage)
Chief Financial Officer (H2A)

Mr. Kingsley Ewansiha
Director (Heritage)
VP Operations (H2A)

Mr. Sunday Omakor
Director (Heritage)
VP Food Quality and Safety (H2A)

All of these Officers are located in this District, therefore, H2A is located in this District for the purposes of Rule B.

9. Shine Bridge Global Incorporated (“Shine Bridge”) is a Virginia corporation with its Directors resident in this District. Shine Bridge’s website discloses that Shine Bridge “is working with Elephant Group PLC and H2A Foods Nigeria Limited to industrialize High-

³ <https://agronigeria.ng/2018/04/04/edo-govt-partners-two-firms-on-6m-cassava-farm/>.

⁴ <http://www.h2afoods.com/thecompany.asp>.

Quality Cassava Flour (HQCF) in Project Dumbo.”⁵ A diagram of the “Project Dumbo” investments with which Shine Bridge is involved with defendant Elephant Group, also at the Shine Bridge web page <http://shinebridgeglobal.com/about-us/>, is the following:



Shine Bridge consequently is working with Elephant Group on projects exceeding \$9.4 million, according to Shine Bridge.

10. Shine Bridge’s website, <http://shinebridgeglobal.com/partners/> lists Elephant Group as a “Partner,” further disclosing Shine Bridge’s extensive work with Elephant Group to include the following:

Elephant Group, PLC

A multinational company in exports, production, processing, sourcing, marketing and distribution of agro-commodities throughout the 36 states of Nigeria, including Abuja, the Federal Capital. With a new attraction to cassava, our reputation as experts in these agribusinesses speaks for Elephant Group in the marketplace. The Group has created a sub-regional company which is a leader in many of its businesses, with a breadth of knowledge and experience unparalleled in our chosen industries.

11. Dr. Tony Bello is the founder and managing director of Shine Bridge.⁶ He is also the President and Chief Executive Officer of H2A. A September 2019 article further addresses the Shine Bridge – Elephant partnership, as follows:⁷

⁵ <http://shinebridgeglobal.com/partners/>.

Two US-based agribusiness companies – Shine Bridge Global Inc. (Chesapeake Beach, Virginia) and Fayus Inc. (Sacramento, California); with two Nigeria-based agribusinesses – Elephant Group Plc. and Pacific Ring West Africa (PRWA), unveiled the strategic partnership to export High-Quality Cassava Flour (HQCF) or Tapioca Flour from Nigeria to the US for making gluten-free food products for human and animal consumption.

Subject Matter Expert at the Summit, Dr. Tony Bello, Managing Director, Shine Bridge Global (SBG) is determined to partner with local Nigeria agribusinesses and other US food and agricultural companies to transform cassava into functional flour for making gluten-free consumer foods for humans and animals in Africa, North America and Europe.

12. Rotunda R. Morgan and Landa Gherrá Morgan (husband and wife) are Directors/Partners of Shine Bridge. The Morgans also co-own Nfluxion Design Solutions, technical design and web development outfit and online marketing company, located at 3 901 Arlington Highlands Blvd., #200 Arlington, Texas 76018. Mr. Morgan is the Registered Agent for Nfluxion at that same address.

13. As these Directors of Shine Bridge are located in this District, and can be served in this District, Shine Bridge is located in this District.

14. The Garnishees named herein are entities either registered to do business, and with agents authorized to accept service of process, in this District, or share common executive management. On information and belief, the Garnishees owe accounts payable to Elephant Group because Garnishees do business with Elephant Group.

Facts

15. The Vessel was chartered to carry a cargo of prilled urea (the “Cargo”) owned by Elephant Group, from Ukraine to Lagos, Nigeria. Tango caused a bill of lading for the Cargo to be issued to Elephant Group.

⁶ <http://shinebridgeglobal.com/our-team/>.

⁷ <https://cityvoiceng.com/feed-nigeria-summit-features-strategic-partners-on-tapioca-flour-industrialization-project-in-edo-state/> (September 1, 2019).

16. Once the Vessel arrived at Lagos on July 18, 2016, however, the Vessel was detained and through no fault of Tango or the Cargo, prevented from unloading by Nigerian port authorities.

17. Following a number of Nigerian court proceedings in which Elephant Group sought to obtain permission to discharge and to prevent the Nigerian government from confiscating the Cargo, Tango learned that Elephant Group had failed to secure the appropriate license to permit discharge of the Cargo, breaching its maritime contract with Tango, specifically, the obligations of Elephant Group to take the proper and necessary steps to have the Cargo admitted for import, so that the Vessel could be unloaded and could sail.

18. The Vessel was detained at Lagos for an extraordinary period of approximately two and one half years, when, on January 10, 2019, the Vessel finally after unloading was permitted to depart from Lagos.

19. As a result of Elephant Group's breach of contract, demurrage charges of at least USD 1,000,000 have accrued.

20. Tango because of Elephant Group's breach of contract also was forced to expend at least USD 200,000 to provide supplies and maintenance to the Vessel.

21. Elephant Group is therefore liable to Tango for damages of at least USD 1,200,000.

Count I – Breach of Maritime Contract

22. Tango incorporates the above paragraphs as if fully set forth herein.

23. Elephant Group has breached its maritime contract with Tango as set out more fully above.

24. Despite repeated demand, Tango remains unpaid for amounts due as a result of Elephant Group's breach of maritime contract.

25. Tango demands judgment against Elephant Group as set forth more fully below.

Count II – Maritime Attachment and Garnishment (Rule B)

26. Tango incorporates the above paragraphs as if fully set forth herein.

27. Tango seeks issue of process of maritime attachment so that it may obtain security for its claims against Elephant Group and ultimately payment of those claims from the security.

28. No security for Tango's claims has been posted by Elephant Group or anyone acting on Elephant Group's behalf to date.

29. Elephant Group cannot be found within this district within the meaning of Rule B. Plaintiff believes, and it is plausible to believe, that the Defendant has, or is likely to possess, assets and interests in property which are, belonging to, due, or for the benefit of the Defendant which are or will be located in this District consisting of cash, funds, credits, debts, accounts payable, escrow accounts, or payments potentially in the possession of Garnishees for the payments and financing of the delivery of agribusiness goods and services, capacity development, technology transfers, and the supply of food ingredients to food processors and manufacturers.

Prayer for Relief

WHEREFORE, Tango prays:

- A. That process in due form of law issue against Elephant Group, citing Elephant Group to appear and answer under oath each and every one of the matters alleged in the Verified Complaint;
- B. That since Elephant Group cannot be found within this District pursuant to Rule B, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B attaching all of Elephant Groups' tangible or intangible property or any other funds held by any

garnishee, which are due and owing to Elephant Group, up to the amount of at least **USD 1,250,000** (principal damages of at least \$1,200,000, \$50,000 for interest, costs and attorneys' fees) to secure Tango's claims, and that all persons claiming any interest in the same be cited to appear and, pursuant to Rule B, answer the matters alleged in the Verified Complaint;

- C. That as provided in Supplemental Rule B, that such person over 18 years of age be appointed as moved for herein pursuant to Supplemental Rule B and Fed. R. Civ. P. 4(c) to serve process of Maritime Attachment and Garnishment in this action;
- D. That Tango may be granted such other, further, and different relief as may be just and proper.

Dated: January 16, 2020.

Respectfully Submitted,

/s/ Scott R. Wiehle

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VERIFICATION

I am a Partner of the law firm Simms Showers LLP, counsel to Plaintiff.

The facts alleged in the foregoing complaint are true and correct to the best of my knowledge and information based upon the records of Plaintiff made available to me by Plaintiff. Authorized officers of Plaintiff are not readily available in this District to make verifications on Plaintiff's behalf. I am authorized to make this verification on Plaintiff's behalf.

I hereby certify that:

- 1) the facts alleged in the foregoing complaint set out an *in personam* claim against the Defendants which is cognizable in admiralty.
- 2) I caused a search to be made of electronic records and Directory Assistance for addresses and telephone numbers in this District and also for any corporate registration of defendants in the State of Texas. There is no record of any general or resident agent authorized to accept service of process for Defendants in this District.
- 3) property belonging to the Defendants is present or will soon be present in the district; and
- 4) there is no statutory or general maritime law prohibition to the attachment.

Pursuant to 28 U.S.C. § 1746(1), I solemnly declare under penalty of perjury that the foregoing is true and correct.

Executed on January 15, 2020.



J. Stephen Simms